

ALEXANDER KANDEL (SBN 306176)

[akandel10@gmail.com](mailto:akandel10@gmail.com)

1240 S. Corning St., Suite 308

Los Angeles, California 90035

Telephone: (424) 279-4287

Attorney for Plaintiff PRO 49 DEVELOPMENT, LLC

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

PRO 49 DEVELOPMENT, LLC, a  
California limited liability company,

Plaintiff,

v.

NESS EXPRESS 1, LLC, a Delaware  
limited liability company; ADAM  
DECKER, an individual; JOSEPH  
DECKER, an individual; TOMMY'S  
EXPRESS LLC, a Michigan limited  
liability company; RYAN  
ESSENBURG, an individual; and  
DOES 1 through 100, inclusive,

Defendants.

**CASE NO.: 2:24-cv-001850-JAM-JDP**

**[Removed from Placer County Superior  
Court, Case No. S-CV-0052813]**

**JOINT STIPULATION AND ORDER TO  
FILE FIRST AMENDED COMPLAINT  
ADDING NESS EXPRESS HOLDINGS,  
LLC AS DEFENDANT**

1 Plaintiff Pro 49 Development, LLC (“Pro 49”) and Defendants Ness Express 1, LLC  
2 (“Ness”), Adam Decker (“A. Decker”), Joseph Decker (“J. Decker”), Tommy’s Express LLC  
3 (“Tommy’s”), and Ryan Essenburg (“Essenburg”) (collectively, the “Parties”), through their  
4 respective counsel hereby enter the following joint stipulation:

5 **WHEREAS:**

6 1. On May 15, 2024, Pro 49 filed a complaint in the Superior Court for the State of  
7 California for the County of Placer, entitled *Pro 49 Development, LLC v. Ness Express 1, LLC, et*  
8 *al.*, Case No. S-CV-0052813;

9 2. In the Complaint, Pro 49 named the following Defendants: Ness Express, A.  
10 Decker, J. Decker, Tommy’s, Essenburg, and Does 1-100;

11 3. On June 28, 2024, Ness Express filed a Notice of Removal of Civil Action Under 28  
12 U.S.C. Section 1441 (Diversity Jurisdiction), removing the case to this Court (Dkt. No. 1);

13 4. On October 4, 2024, A. Decker and J. Decker filed a Notice of Motion and Motion  
14 to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (the “Decker Motion to Dismiss”),  
15 arguing that Pro 49 failed to state a claim against them on the basis of alter ego liability (Dkt. No.  
16 22);

17 5. In the Motion to Dismiss, A. Decker and J. Decker argue that “the Deckers do not  
18 own Ness. Adam [Decker] and Joe [Decker] own Ness [Express] Holdings, LLC.” Dkt. No. 22 at  
19 7:6;

20 6. The Court denied the Decker Motion to Dismiss and noted that “the Deckers  
21 previously stated that Ness is ‘wholly owned by parent company’ Ness Express Holdings. The  
22 Deckers also admit that they are the ‘sole members of Ness Holdings,’ which means they  
23 exclusively and completely control Ness.” Dkt. No. 30 at 7:24-28 (citations omitted);

24 7. Pro 49 contends that justice requires adding Ness Express Holdings, LLC as a  
25 defendant;

26 8. Pursuant to Federal Rules of Civil Procedure 15, Pro 49 may amend its pleading  
27 either as a matter of course, with leave of Court, or with the opposing parties’ consent;  
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1           9.       Pursuant to Federal Rules of Civil Procedure 21, “[o]n motion or on its own, the  
2 court may at any time, on just terms, add or drop a party”;

3           10.      The Parties have agreed to allow Pro 49 to amend its Complaint, and file a First  
4 Amended Complaint, adding Ness Express Holdings, LLC, a Delaware limited liability company,  
5 as a defendant in this Action.

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7 **BASED ON THE FOREGOING, THE PARTIES STIPULATE AS FOLLOWS:**

8           1.       Pro 49 may file a First Amended Complaint, to add Ness Express Holdings, LLC, a  
9 Delaware limited liability company, as a defendant.

10          2.       The timing of Pro 49’s filing of the First Amended Complaint will be simultaneous  
11 with any amendment to the Complaint in response to the Court’s anticipated ruling on the currently  
12 pending Motion to Dismiss filed by Tommy’s and Essenburg. Dkt. No. 32. If no such amendment  
13 is permitted by the ruling on Dkt. No. 32, Pro 49 shall file its First Amended Complaint within 21  
14 days of the Court’s ruling on Dkt. No. 32. Such First Amended Complaint shall contain no  
15 amendments relating to any allegation against Tommy’s or Essenburg, except to the extent  
16 permitted by the Court’s anticipated ruling on Dkt. No. 32.

17 **IT IS SO STIPULATED.**

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1 Date: December 12, 2024

2 By: /s/ Alexander Kandel  
3 Alexander Kandel  
4 Attorney for Plaintiff Pro 49 Development, LLC

5 Date: December 13, 2024

6 FERGUSON CASE ORR PASTERSON LLP  
7 By: /s/ Norry S. Harn  
8 Leslie A. McAdam  
9 Norry S. Harn  
10 Attorneys for Defendants Ness Express 1, LLC;  
11 Adam Decker; and Joseph Decker

12 Date: December 12, 2024

13 BAKER & MCKENZIE LLP  
14 By: /s/ Nancy Nguyen Sims  
15 Nancy Nguyen Sims  
16 Michelle Leonard  
17 Attorneys for Defendants Tommy's Express LLC  
18 and Ryan Essenburg

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**ORDER**

Plaintiff Pro 49 may file a First Amended Complaint, to add Ness Express Holdings, LLC, a Delaware limited liability company, as a defendant.

The timing of Pro 49's filing of the First Amended Complaint will be simultaneous with any amendment to the Complaint in response to the Court's anticipated ruling on the currently pending Motion to Dismiss filed by Tommy's and Essenburg. Dkt. No. 32. If no such amendment is permitted by the ruling on Dkt. No. 32, Pro 49 shall file its First Amended Complaint within 21 days of the Court's ruling on Dkt. No. 32. Such First Amended Complaint shall contain no amendments relating to any allegation against Tommy's or Essenburg, except to the extent permitted by the Court's anticipated ruling on Dkt. No. 32.

**IT IS SO ORDERED.**

Dated: December 16, 2024

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ  
SENIOR UNITED STATES DISTRICT JUDGE